

DATE: November 28, 2007

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In re:	)	
	)	
-----	)	ISCR Case No. 07-08355
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
_____	)	

**DECISION OF ADMINISTRATIVE JUDGE  
LEROY F. FOREMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Jr., Esq., Department Counsel

**FOR APPLICANT**

William C. Johnson, Jr., Esq.

**SYNOPSIS**

After Applicant was laid off from his job in August 2001, he decided to attend a community college for about four months, during which he was unemployed. After college, he worked at several low-paying jobs and used his credit cards for living expenses, accumulating eight delinquent debts totaling about \$16,846. Since beginning his current job in February 2005, he has resolved three smaller debts, but the remaining debts totaling more than \$14,000 remain unresolved. Recently, he borrowed about \$28,000 to buy a new car, and he spent a \$1,500 bonus on a high-definition television. Security concerns based on financial considerations are not mitigated. Clearance is denied.

**STATEMENT OF THE CASE**

On August 9, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the basis for its preliminary decision to deny Applicant a security clearance. This action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended and modified; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended and modified (Directive); and the revised adjudicative guidelines (AG) approved by the President on December 29, 2005, and implemented effective September 1, 2006. The SOR alleges security concerns under Guideline F (Financial Considerations).

Applicant answered the SOR through counsel on August 30, 2007, admitted one allegation with an explanation and denied all others, and requested a hearing. The case was assigned to me on October 10, 2007, and heard on October 30, 2007, as scheduled. I kept the record open until November 16, 2007, to enable Applicant to submit additional documentary evidence. DOHA received the transcript (Tr.) on November 9, 2007.

Applicant submitted additional evidence by facsimile transmission on November 16, 2007, and it has been admitted as Applicant's Exhibits (AX) C and D. The facsimile cover sheet, cover letter, and certificate of service are attached to the record as Hearing Exhibit (HX) I. Department Counsel's response is attached as HX II. The record was closed on November 16, 2007.

### **FINDINGS OF FACT**

Applicant's admissions in his answer to the SOR and at the hearing are incorporated into my findings of fact. I make the following findings:

Applicant is a 38-year-old network security engineer for a defense contractor. He served on active duty in the U.S. Army from December 1987 to March 1992, and in the Army National Guard from March 1992 to December 1995. He has never held a security clearance.

Applicant worked at various jobs after his release from active duty. In August 2001, he was laid off from a job with a defense contractor. He received about \$2,000 in severance pay, and he decided to use the money to attend a community college (Tr. 30). He was not employed while in college. He graduated in December 2001 (Tr. 31).

After college, Applicant worked at several low-paying part-time jobs, and he used his credit cards to pay living expenses (Tr. 31, 33-34). He was taking care of his mother, who was in poor health, during this time (Tr. 21). Between July 2001 and April 2004, seven credit card accounts, with balances totaling about \$16,846 were charged off as bad debts or placed for collection. He started receiving telephone calls and letters regarding his delinquent debts, but he ignored them because he did not have the funds to pay them (Tr. 32-33).

Applicant's pay was garnished twice between February and September 2002 for delinquent state taxes in amounts of \$83 and \$681. He testified he requested that the taxes be collected by garnishment (Tr. 58). The delinquent taxes have been paid in full (Tr. 26; AX C).

Applicant began his current job in February 2005, and he currently earns about \$61,500 per year. He is unmarried and has no children (Tr. 52). His current take-home pay is about \$1,400 every two weeks (Tr. 48). He has a student loan of about \$6,625, on which payments are deferred (GX 4 at 2).

Applicant testified the two credit card accounts alleged in SOR ¶¶ 1.e and 1.f were compromised and have been paid off in full (Tr. 26, 42). He produced evidence of 40 payments of \$30 between December 28, 2005, and July 27, 2007 (AX B; AX D).

Applicant also testified the debt alleged in SOR ¶ 1.h was paid in full, but he had no documentary evidence of payment (Tr. 26-27). Regarding this debt, he testified, “if I’m not mistaken, I paid it off with cash or whatever, but if this is something that is on another credit report, then obviously I’m mistaken.” (Tr. 46.) His credit report dated September 28, 2007, reported the debt as unpaid (GX 4 at 1).

Applicant received an offer of settlement from the creditor alleged in SOR ¶ 1.g, but he had not accepted the offer or made any payments on the debt as of the date of the hearing (AX A; Tr. 44). He testified he has asked his attorney to negotiate settlements of the debts alleged in SOR ¶¶ 1.a, 1.b, and 1.c, but no agreements had been reached as of the time of the hearing, and no payments had been made (Tr. 26, 43, 59).

The evidence concerning the debts alleged in the SOR is summarized in the table below.

<b>SOR</b>	<b>Debt</b>	<b>Amount</b>	<b>Status</b>	<b>Evidence</b>
1.a	Credit Card	\$2,546	Unpaid	GX 4 at 1; Tr. 26, 43, 59
1.b	Credit Card	\$2,259	Unpaid	GX 4 at 1; Tr. 26, 43, 59
1.c	Credit Card	\$2,392	Unpaid	GX 4 at 2; Tr. 26, 43, 59
1.d	State Taxes	\$764	Paid by garnishment	AX C; Tr. 26
1.e	Credit Card	\$1,114	Settled	AX B; AX D; Tr. 39-40
1.f	Credit Card	\$966	Settled	AX B; AX D; Tr. 39-40
1.g	Credit Card	\$2,270	Unpaid	GX 4 at 2; Tr. 26, 43, 59
1.h	Credit Card	\$5,299	Claimed to be paid, but no documentation	GX 4 at 1; Tr. 26-27, 44, 46

In 2005, Applicant borrowed about \$28,000 to buy a car (Tr. 48). His monthly car payments are about \$601, and his insurance is \$328 per month. His monthly rent, including utility payments, is \$750. He pays about \$100-\$130 per month for cable, internet, and telephone service, and about \$125 for cell phone service (Tr. 51). He has medical insurance, but he pays a co-payment for his medications for high blood pressure, diabetes, and high cholesterol (Tr. 52). He has about \$870 per month for living expenses, food, and gasoline (Tr. 54-55). He recently received a \$1,500 bonus, and he used it to purchase a high-definition television set (Tr. 53).

Applicant has never sought credit counseling services (Tr. 47). He testified he did not realize his financial record would affect his ability to obtain a clearance. When he realized the importance of his financial record, he began making payments on the two debts in SOR ¶¶ 1.e and 1.f, and he asked his attorney to begin negotiating with his other creditors (Tr. 25-26).

## POLICIES

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified. Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the Guidelines. Each clearance decision must be a fair, impartial, and commonsense decision based on the relevant and material facts and circumstances, the whole person concept, the disqualifying conditions and mitigating conditions under each specific guideline, and the factors listed in AG ¶¶ 2(a)(1)-(9).

A person granted access to classified information enters into a special relationship with the government. The government must be able to have a high degree of trust and confidence in persons with access to classified information. However, the decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the government must establish, by substantial evidence, conditions in the personal or professional history of the applicant which disqualify, or may disqualify, the applicant from being eligible for access to classified information. *See Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The Guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. *See* ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. *See* Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; *see* AG ¶ 2(b).

## CONCLUSIONS

### **Guideline F (Financial Considerations)**

The concern under this guideline is as follows: “Failure or inability to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds.” AG ¶18.

Several disqualifying conditions under this guideline could raise a security concern and may be disqualifying in this case. AG ¶ 19(a) is raised where there is an “inability or unwillingness to satisfy debts.” AG ¶ 19(b) is a two-pronged condition that is raised where there is “indebtedness caused by frivolous or irresponsible spending and the absence of any evidence of willingness or intent to pay the debt or establish a realistic plan to pay the debt.” AG ¶ 19(c) is raised when there is “a history of not meeting financial obligations.” AG ¶ 19(e) is raised when there is “consistent spending beyond one’s means, which may be indicated by excessive indebtedness, significant negative cash flow, high debt-to-income ratio, and/or other financial analysis.” AG ¶ 19(g) is raised by “failure to file annual Federal, state, or local income tax returns as required or the fraudulent filing of the same.”

Applicant’s financial history raises AG ¶¶ 19(a), (c), and (e). AG ¶ 19(b) is not raised, because his purchases of an expensive new car and a high-definition television set instead of paying off his delinquent debts, although frivolous and irresponsible, did not cause the debts alleged in the SOR. AG ¶ 19(g) is not raised because his delinquent taxes were the result of inability to pay rather than failure to file or fraud.

Since the government produced substantial evidence to raise the disqualifying conditions in AG ¶¶ 19(a), (c) and (e), the burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the government. *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

Several mitigating conditions are relevant to this case. Security concerns based on financial problems can be mitigated by showing that “the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment.” AG ¶ 20(a). This condition is not established because Applicant’s debts are numerous and not yet resolved. His irresponsible assumption of additional debt for an expensive car and use of his bonus to buy a high-definition television set reflect bad financial judgment and lack of financial discipline.

Security concerns under this guideline also can be mitigated by showing that “the conditions that resulted in the financial problem were largely beyond the person’s control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances.” AG ¶ 20(b). Both prongs, i.e., conditions beyond the person’s control and responsible conduct, must be established.

Applicant’s loss of employment in 2001 was a circumstance beyond his control, and his desire to attend college education was understandable. It was not reasonable, however, for him to

become a full-time student with no means of financial support. It also was not reasonable for him to ignore the telephone calls and letters from creditors instead of attempting to reach an accommodation. I conclude AG ¶ 20(b) is not established.

Security concerns under this guideline also can be mitigated by showing that “the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control.” AG ¶ 20(c). Applicant has never sought financial counseling. He recently retained an attorney, but there are no “clear indications” that his financial problems are being resolved. I conclude AG ¶ 20(c) is not established.

Security concerns under this guideline also can be mitigated by showing that “the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts.” AG ¶ 20(d). Applicant requested that the delinquent taxes be collected by garnishment, and there is no indication of tax liens on his credit reports. He settled and paid off the debts in SOR ¶¶ 1.e and 1.f in installments. I conclude that a “good faith effort” is established for these three debts. On the other hand, he was vague and uncertain regarding the debt in SOR ¶ 1.h, and he could produce no documentation to corroborate his assertion that the debt had been paid in full. His most recent credit report contradicts his testimony. Finally, he admitted that no settlement agreements have been reached and no payments made on the remaining debts. I conclude AG ¶ 29(d) is established only for the debts alleged in SOR ¶¶ 1.d, 1.e, and 1.f.

### **Whole Person Analysis**

In addition to considering the specific disqualifying and mitigating conditions under each guideline, I have also considered: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the applicant’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. AG ¶¶ 2(a)(1)-(9).

Applicant is a mature, well-educated adult. His unresolved debts are significant but not insurmountable in light of his current income. At the hearing, he appeared to lack clear comprehension of his financial situation, and he is depending on his lawyer to resolve it. Although he resolved the debts in SOR ¶ 1.e and 1.f after beginning his current job, he did so only after learning that his debts could prevent him from obtaining a clearance. He has never received any kind of credit counseling, and appears financially naive and undisciplined, as demonstrated by his recent high-dollar discretionary purchases in spite of his ongoing financial problems. His financial record keeping is spotty. Although he has resolved some debts and obtained the assistance of a lawyer to resolve the remaining debts, he has not yet established a track record of financial responsibility.

After weighing the disqualifying and mitigating conditions under Guideline F, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns based on financial considerations. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant him a security clearance.

## **FORMAL FINDINGS**

The following are my conclusions as to each allegation in the SOR:

Paragraph 1. Guideline F (Financial):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	For Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	Against Applicant

## **DECISION**

In light of all of the circumstances in this case, it is not clearly consistent with the national interest to grant Applicant a security clearance. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge